



May 2, 2001

Ms. Zandra L. Narvaez
Attorney
Legal Services Division
City Public Service of San Antonio
P.O. Box 1771
San Antonio, Texas 78296-1771

OR2001-1782

Dear Ms. Narvaez:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 146807.

City Public Service ("CPS") received a request for the salaries of the top fifteen executives at CPS. You state that you have released the salaries of the top five executives. You claim that the remaining requested information is excepted from disclosure under sections 552.104 and 552.131 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

Section 552.131, as added by Senate Bill 7,¹ excepts from disclosure a public power utility's information related to a competitive matter. The exception defines "competitive matter" as a matter the public power utility governing body in good faith determines by vote to be related to the public power utility's competitive activity. The governing body must also, in like manner, determine that the release of the information would give an advantage to competitors or prospective competitors. Section 552.131(a)(3) lists thirteen categories of information that may not be deemed competitive matters. The attorney general may conclude that section 552.131 is inapplicable to the requested information only if, based on the information provided, the attorney general determines the public power utility governing body has not acted in good faith in determining that the issue, matter, or activity is a competitive matter or that the information requested is not reasonably related to a competitive matter. Gov't Code § 552.131(c). Further, section 552.131(b) provides:

¹Act of May 27, 1999, 76th Leg., R.S., ch. 405, § 46 (codified at Gov't Code § 552.131).

Information or records are excepted from the requirements of Section 552.021 if the information or records are reasonably related to a competitive matter, as defined in this section. Excepted information or records include the text of any resolution of the public power utility governing body determining which issues, activities, or matters constitute competitive matters. *Information or records of a municipally owned utility that are reasonably related to a competitive matter are not subject to disclosure under this chapter*, whether or not, under the Utilities Code, the municipally owned utility has adopted customer choice or serves in a multiply certificated service area. This section does not limit the right of a public power utility governing body to withhold from disclosure information deemed to be within the scope of any other exception provided for in this chapter, subject to the provisions of this chapter.

Gov't Code § 552.131(b) (emphasis added).

The CPS Board of Trustees, which is a "public power utility governing body," passed a resolution by vote pursuant to section 552.131 in which it determined that information regarding executive pay beyond what is required to be disclosed by SEC regulations for investor owned utilities is related to a competitive matter. According to the resolution, release of executive pay could allow competitors to assess potential offers to attract key CPS personnel. You also claim that the salary information is not included among the list of matters expressly excluded from the definition of competitive matters in section 552.131(a)(3). Accordingly, we agree that the submitted salary information constitutes competitive matters in accordance with the resolution and, therefore, is excepted from disclosure pursuant to section 552.131.

You also ask whether CPS may transfer the requested information to the requestor as an inter-governmental transfer. You state that the requestor, Memphis Light, is a "governmental entity organized pursuant to the laws of the State of Tennessee." Generally, a governmental body, such as CPS, may transfer information to another governmental body subject to the Public Information Act (the "Act") without violating the confidentiality of the information or waiving exceptions to disclosure. See Attorney General Opinions H-917 at 1 (1976), H-242 at 4 (1974); Open Records Decision No. 661 at 3 (1991). In Open Records Decision No. 650 (1996), this office found that the policy supporting the interagency exchange of information is absent when a federal agency requests information that is not required by law to be disclosed as the governmental body cannot effectively insure that the federal agency will maintain the confidentiality of the information because the federal agency is subject to an open records law that differs from the Act. See Attorney General Opinion H-242 at 4 (1974); see also Attorney General Opinion MW-565 at 4 (1982); Open

Records Decision No. 561 at 6 (1990). As with federal agencies, the requestor is not subject to the Act and may be subject to an open records law that differs from the Act. Therefore, we conclude that CPS may not disclose the requested information as a permissible interagency transfer.

In conclusion, CPS may withhold the submitted information under section 552.131 and should not transfer the requested information to this requestor. Because section 552.131 is dispositive, we need not address section 552.104.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

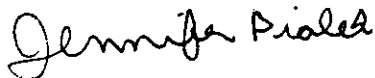
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer H. Bialek
Assistant Attorney General
Open Records Division

JHB/rr

Ref: ID# 146807

Encl: Submitted documents

cc: Ms. Joanne P. Russ
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(w/o enclosures)